

I. REAL PARTY IN INTEREST.....	1
II. RELATED APPEALS AND INTERFERENCES	1
III. STATUS OF CLAIMS.....	2
IV. STATUS OF AMENDMENTS.....	2
V. SUMMARY OF CLAIMED SUBJECT MATTER	2
VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL	3
VII. ARGUMENT	5
VIII. CLAIMS APPENDIX.....	16
IX. EVIDENCE APPENDIX.....	22
X. RELATED PROCEEDINGS APPENDIX.....	23

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of	:	Customer Number: 46320
	:	
David KAMINSKY, et al.	:	Confirmation Number: 1386
	:	
Application No.: 10/635,598	:	Group Art Unit: 2151
	:	
Filed: August 6, 2003	:	Examiner: K. Tang
	:	
For: INTELLIGENT MAIL GATEWAY	:	

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed August 27, 2007, and in response to the Examiner reopening prosecution in the Office Action dated March 5, 2008, wherein Appellants appeal from the Examiner's rejection of claims 1-24.

I. REAL PARTY IN INTEREST

This application is assigned to IBM Corporation by assignment recorded on August 6, 2003, at Reel 014400, Frame 0865.

II. RELATED APPEALS AND INTERFERENCES

Appellants are unaware of any related appeals and interferences.

III. STATUS OF CLAIMS

Claims 1-24 are pending and three-times rejected in this Application. It is from the multiple rejections of claims 1-24 that this Appeal is taken.

IV. STATUS OF AMENDMENTS

The claims have not been amended subsequent to the imposition of the Third Office Action dated March 5, 2008 (hereinafter the Third Office Action).

V. SUMMARY OF CLAIMED SUBJECT MATTER

Referring to Figure 1 and independent claim 1, an intelligent electronic mail (e-mail) gateway 140 is disclosed. The gateway 140 includes a message store 180 and a notification manager 200. The message store 180 is configured to store received messages 190 forwarded by senders 110 over a network 130 to a mail server 150 coupled to the e-mail gateway 140 and associated with corresponding intended recipients 160 (lines 9-12, paragraph [0018] of Appellants' disclosure). The notification manager 200 is coupled both to the gateway 140 and the message store 180 (lines 1-5, paragraph [0020]). The manager 200 is configured to notify selected ones of the senders 110 when delivery to the intended recipients 160 has become impaired (lines 1-10 of paragraph [0020]).

Referring to Figure 2 and independent claim 5, a method for intelligently handling an impairment to the delivery of e-mail messages to intended recipients in a mail delivery system is disclosed. In blocks 210, 220, received e-mail messages are stored prior to forwarding the messages to inboxes of respective mail servers (lines 1-5 of paragraph [0021]). In block 230, an impairment to delivering the messages to the inboxes is detected (lines 5-11 of paragraph

[0021]). In block 240, senders for selected ones of the messages are identified (lines 15-16 of paragraph [0022]). In block 250, a notification of the impairment is forwarded to the identified senders (line 17 of paragraph [0022]).

Referring to Figure 2 and independent claim 15, a machine readable storage having stored thereon a computer program for intelligently handing an impairment to the delivery of e-mail messages to intended recipients in a mail delivery system is disclosed. The computer program comprises a routine set of instructions for causing the machine to perform the following steps. In blocks 210, 220, received e-mail messages are stored prior to forwarding the messages to inboxes of respective mail servers (lines 1-5 of paragraph [0021]). In block 230, an impairment to delivering the messages to the inboxes is detected (lines 5-11 of paragraph [0021]). In block 240, senders for selected ones of the messages are identified (lines 15-16 of paragraph [0022]). In block 250, a notification of the impairment is forwarded to the identified senders (line 17 of paragraph [0022]).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Claims 1-24 were rejected under the second paragraph of 35 U.S.C. § 112;
2. Claims 1, 4-6, 9, 15-16, and 19 were rejected under 35 U.S.C. § 102 for anticipation based upon Tomkow et al., U.S. Patent Publication No. 2006/0112165 (hereinafter Tomkow);
3. Claims 2, 12-14, and 22-24 were rejected under 35 U.S.C. § 103 for obviousness based upon Tomkow in view of Horvitz et al., U.S. Patent Publication No. 2002/0087649 (hereinafter Horvitz);
4. Claims 7-8 and 17-18 were rejected under 35 U.S.C. § 103 for obviousness based upon Tomkow in view of Delaney et al., U.S. Patent Publication No. 2006/0177021 (hereinafter Delaney); and

Application No.: 10/635,598

5. Claims 3, 10-11, and 20-21 were rejected under 35 U.S.C. § 103 for obviousness based upon Tomkow in view of Tomkow, U.S. Patent Publication No. 2002/0144154 (hereinafter Tomkow 2).

VII. ARGUMENT

Although not an appealable issue, Appellants will respond to the Examiner's objection to the specification found in the paragraph spanning pages 2 and 3 of the Third Office Action. Contrary to the Examiner's assertion, the term "machine readable storage" is not "new terms appearing in the claims." Instead, this term was found in originally-presented claims 15-24. Original claims constitute their own description.¹ Thus, original claim 15, for example, provides adequate support in the specification for the term "[a] machine readable storage."

THE REJECTION OF CLAIMS 1-4 UNDER 35 U.S.C. § 101

For convenience of the Honorable Board in addressing the rejections, and claims 2-4 stand or fall together with independent claim 1.

With regard to the Examiner's newly presented rejection, the Examiner asserted the following on page 2 of the Third Office Action:

Claims 1-4 are rejected under 35 U.S.C. 101 because "intelligent electronic mail (e-mail) gateway" can be interpret as software module (please see Specification Page 11, Paragraph 0023. Therefore, Claims 1-4 failed to be limited to embodiments which fall within a statutory category.

At the outset, Appellants note that the Examiner's requirement that the claims "be limited to embodiments which fall within a statutory category" is an incorrect statement of the law. The Examiner's analysis appears to be burdened by the improper belief that a claim can be directed to statutory subject matter or non-statutory subject matter, but not both. The Examiner's position is that since the claims could be directed to non-statutory subject matter, then the claims cannot be directed to statutory subject matter.

¹ In re Koller, 613 F.2d 819, 204 USPQ 702 (CCPA 1980).

Claims are to be given their broadest, reasonable interpretation consistent with Appellants' specification. Referring to paragraph [0023] of Appellant's disclosure, Appellants specifically identify that "the present invention can be realized in a centralized fashion in one computer system, or in a distributed fashion where different elements are spread out across several interconnected computer systems." Thus, under a broadest, reasonable interpretation of claim 1, this claim is directed to statutory subject matter. Moreover, claim 1 also explicitly recites a message store (i.e., a storage device) which is commonly recognized by those skilled in the art as an physical device, such as memory or a hard drive. Notwithstanding these straight-forward interpretation of the claims, the Examiner asserts that the claims could be directed to non-statutory subject matter and thus not statutory subject matter. Appellants' position is that such an assertion as to whether the claims could cover non-statutory subject matter is not dispositive as to whether or not a claim meets the requirements of 35 U.S.C. § 101.

Reference is made to the recent decision of the Federal Circuit of In re Comiskey.² Although the Court held that several claims were directed to non-statutory subject matter, the Court determined that other of the claims³ were directed to statutory subject matter. In particular, the Court referred to the following dictionary definition of a "module": "[a] self-contained hardware or software component that interacts with a larger system." Under the Examiner's application of the law, since a "module" can be a software component, which has long been described by the Patent Office as being non-statutory subject matter, the Examiner

² Appeal No. 2006-1286 (Fed. Cir. Sep. 20, 2007).

³ ("We consider independent claims 17 and 46 separately. They recite the use of 'modules,' including 'a registration module for enrolling' a person, 'an arbitration module for incorporating arbitration language,' and 'an arbitration resolution module for requiring a complainant [or party] to submit a request for arbitration resolution to the mandatory arbitration system.'")

would conclude the claims directed to a "module" do not meet the requirements of 35 U.S.C. § 101. Such an analysis, however, would be contrary to the Federal Circuit's decision with regard to these particular claims.

This Federal Circuit application of 35 U.S.C. § 101 is consistent with the actual language of 35 U.S.C. § 101, which is reproduced below:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

In comparison, 35 U.S.C. § 102 states "[a] person shall be entitled to a patent unless ..." ⁴ (emphasis added). The difference between § 101 and § 102 of 35 U.S.C. is that 35 U.S.C. § 102 states that if the claims cover certain subject matter (i.e., anticipatory prior art), then the inventor shall not be entitled to a patent. On the contrary, whereas the existence of a single piece of anticipatory prior art excludes a patent from granting under § 102, § 101 is not similarly written. Instead, 35 U.S.C. § 101 only requires that the claimed invention cover statutory subject matter and does not explicitly prevent a patent from issuing if the claimed invention also covers non-statutory subject matter.

Since the decision by the Federal Circuit within In re Comiskey would have come out differently had the Examiner's application of the law been applied and for the reasons discussed above, Appellants' position is that claim 1 is directed to statutory subject matter under 35 U.S.C. § 101, and the Examiner's rejection of the claims under 35 U.S.C. § 101 is not viable.

⁴ Section 103 of 35 U.S.C. qualifies prior art using 35 U.S.C. § 102.

**THE REJECTION OF CLAIMS 1, 4-6, 9, 15-16, AND 19 UNDER 35 U.S.C. § 102 FOR
ANTICIPATION BASED UPON TOMKOW**

For convenience of the Honorable Board in addressing the rejections, claim 4 stands or falls together with independent claim 1; and claims 5-6, 9, 15-16, and 19 stand or fall together with independent claim 1.

As is evident from Appellants' comments below, there are questions as to how the limitations in the claims correspond to features in the applied prior art. In this regard, reference is made to M.P.E.P. § 1207.02, entitled "Contents of Examiner's Answer." Specifically, the following is stated:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

...

(9)(e) For each rejection under 35 U.S.C. 102 or 103 where there are questions as to how limitations in the claims correspond to features in the prior art even after the examiner complies with the requirements of paragraphs (c) and (d) of this section, the examiner must compare at least one of the rejected claims feature by feature with the prior art relied on in the rejection. The comparison must align the language of the claim side-by-side with a reference to the specific page, line number, drawing reference number, and quotation from the prior art, as appropriate. (emphasis added)

Therefore, if the Examiner is to maintain the present rejections and intends to file an Examiner's Answer, the Examiner is required to include the aforementioned section in the Examiner's Answer.

The factual determination of anticipation under 35 U.S.C. § 102 requires the identical disclosure, either explicitly or inherently, of each element of a claimed invention in a single

reference.⁵ Moreover, the anticipating prior art reference must describe the recited invention with sufficient clarity and detail to establish that the claimed limitations existed in the prior art and that such existence would be recognized by one having ordinary skill in the art.⁶

"Both anticipation under § 102 and obviousness under § 103 are two-step inquiries. The first step in both analyses is a proper construction of the claims. ... The second step in the analyses requires a comparison of the properly construed claim to the prior art."⁷ During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification,"⁸ and the broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach.⁹ Therefore, the Examiner must (i) identify the individual elements of the claims and properly construe these individual elements,¹⁰ and (ii) identify corresponding elements disclosed in the allegedly anticipating reference and compare these allegedly corresponding elements to the individual elements of the claims.¹¹ This burden has not been met. In this regard, the Examiner's rejection under 35 U.S.C. § 102 also fails to comply with 37 C.F.R. § 1.104(c).¹²

⁵ In re Rijckaert, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); Perkin-Elmer Corp. v. Computervision Corp., 732 F.2d 888, 894, 221 USPQ 669, 673 (Fed. Cir. 1984).

⁶ See In re Spada, 911 F.2d 705, 708, 15 USPQ 1655, 1657 (Fed. Cir. 1990); Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 678, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988).

⁷ Medichem, S.A. v. Rolabo, S.L., 353 F.3d 928, 933 (Fed. Cir. 2003) (internal citations omitted).

⁸ In re Hyatt, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000).

⁹ In re Cortright, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999).

¹⁰ See also, Panduit Corp. v. Dennison Mfg. Co., 810 F.2d 1561, 1567-68 (Fed. Cir. 1987) (In making a patentability determination, analysis must begin with the question, "what is the invention claimed?" since "[c]laim interpretation, . . . will normally control the remainder of the decisional process"); see Gechter v. Davidson, 116 F.3d 1454, 1460 (Fed. Cir. 1997) (requiring explicit claim construction as to any terms in dispute).

¹¹ Lindermann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984).

¹² 37 C.F.R. § 1.104(c) provides:

In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly

Claim 1

At the outset, Appellants note that the Examiner did not distinguish device claim 1 from method claim 5. Instead, the Examiner's analysis on page 4 of the Third Office Action focuses on the method claims. For ease of reference, the entirety of the Examiner's analysis as to the independent claims is reproduced below:

Referring to Claims 1, 4, 5, and 15, Tomkow disclosed storing received e-mail messages prior to forwarding said messages to inboxes of respective mail servers (before sending the message to the destination, the messages is in the server/Rpost, refer to 0177 and 0080); detecting an impairment to delivering said messages to said inboxes (refer to 0129); identifying senders for selected one of said messages (refer to 0095-0097); and forwarding a notification of said impairment to said identified senders (refer to 0097).

In comparing Fig. 1 of Appellants' disclosure with Fig. 1 of Tomkow, the sender (i.e., feature 110) appears to be shown by feature 13 of Tomkow, and the recipient (i.e., feature 160) appears to be shown by feature 16 or 18 of Tomkow. The claimed mail server (i.e., feature 150) appears to be disclosed by RPost server 14 and/or 16 of Tomkow. However, as claimed, the mail server is associated with the corresponding intended recipients. Thus, the Examiner can only rely upon RPost server 16 to teach the claimed mail server since RPost server 14 is not associated with the corresponding intended recipients.

One issue associated with the above interpretations is that the claimed mail server is associated with corresponding intended recipients (i.e., a mail server for multiple intended recipients). However, the Examiner has not addressed this limitation, and Fig. 1 appears to show that RPost server 16 is associated with a single intended recipient. Thus, the Examiner has failed to establish that Tomkow identically discloses these limitations.

as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.

Although claim 1 recites both a message store and notification manager, the Examiner has not explicitly identified the specific features in Tomkow that allegedly teach these limitations. Thus, the Examiner's analysis is factually-deficient.

Regarding the claimed "notifying selected ones of said senders when delivery to said intended recipients has become impaired," the Examiner cited paragraph [0097] of Tomkow. Upon reviewing this cited passage, Appellants respectfully disagree. Paragraph [0097] refers to MUA notifications, but this cited passage is silent as to a notification that delivery to an intended recipient has become impaired. Also, referring to paragraph [0093] of Tomkow, the MUA notification is sent by the recipient's mail user agent (MUA). Thus, Appellants are unclear as to how the mail user agent would be able to send the notification since delivery to the intended recipient has become impaired. Thus, the Examiner has failed to establish that Tomkow identically discloses these further limitations.

THE REJECTION OF CLAIMS 2, 12-14 AND 22-24 UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON TOMKOW IN VIEW OF HORVITZ

For convenience of the Honorable Board in addressing the rejections, claim 2 stands or falls alone; claims 14, 22, and 24 stand or fall together with claim 12; and claim 23 stands or falls together with claim 13.

Claim 2

The Examiner's reliance upon Horvitz to teach the notification to the sender includes an alternate e-mail address to which the sender can retransmit the message is misplaced. Paragraph [0277] of Horvitz, which was cited by the Examiner refers to a routing system 420 that can route text to a different e-mail address. Thus, although this passage refers to the concept of an alternate e-mail address, absent from the Examiner's cited passage is teachings as to the remainder of the limitations associated with the alternate e-mail address. Thus, Horvitz fails to teach the limitations for which the Examiner is relying upon Horvitz to teach.

Claim 12

Claim 12 recites that "a detailed notification describing a nature of said impairment." However, the Examiner's cited passages within Tomkow are silent as to this limitation. Although paragraph [0155] refers to a delivery as "failed," this is not comparable to the claimed "*nature* of said impairment." The impairment would be the delivery has failed. As such, this teaching does not describe the nature of the impairment.

Claim 13

Claim 13 recites "an estimate of when normal mail delivery can resume." However, the Examiner's cited passages within Tomkow are silent as to these limitations.

**THE REJECTION OF CLAIMS 7-8 AND 17-18 UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS
BASED UPON TOMKOW IN VIEW OF DELANEY**

For convenience of the Honorable Board in addressing the rejections, and claims 8 and

17-18 stand or fall together with dependent claim 7.

Claims 7, 17 and 8, 18 respectively recite the claimed "detecting an impairment" includes the concept of consulting/probing for information regarding the claimed "respective servers." In the statement of the rejection, the Examiner referred to paragraph [0058] within Delaney and made certain assertions on page 6 of the Third Office Action. However, the Examiner has mischaracterized the teachings of paragraph [0058], which is reproduced below:

Conversely, the customer may specify particular allowed time windows within which a message must be delivered. Once again, these may be established permanently for particular contacts or "on the fly" for specific messages. Moreover, customers who are also potential message recipients can block messages in fax and phone modes during specified times by making appropriate "blackout" entries in his data record; such entries also operate to restrict the times during which a message may transmitted. Thus, before allowing a message to be transmitted, transaction server checks for recipient restrictions specified in the message sender's data record as well as in the recipient's data record, if one exists.

Entirely absent from this cited passage is the concept of consulting/probing for information regarding the claimed "respective servers." Thus, Appellants' position is that Delaney fails to teach the limitations for which the Examiner is relying upon Delaney to teach.

THE REJECTION OF CLAIMS 3, 10-11, AND 20-21 UNDER 35 U.S.C. § 103 FOR OBVIOUSNESS BASED UPON TOMKOW IN VIEW OF TOMKOW 2

For convenience of the Honorable Board in addressing the rejections, and claims 3, 10-11, and 20-21 stand or fall together with independent claim 1.

Claims 3, 10-11, and 20-21 respectively depend from independent claims 1, 5, and 15, and Appellants incorporate herein the arguments previously advanced in traversing the imposed rejection of claims 1, 5, and 15 under 35 U.S.C. § 102 for anticipation based upon Tomkow. The secondary reference to Tomkow 2 does not cure the argued deficiencies of Tomkow. Accordingly,

even if one having ordinary skill in the art were motivated to modify Tomkow in view of Tomkow 2, the proposed combination of references would not yield the claimed invention. Appellants, therefore, respectfully submit that the imposed rejection of claims 3, 10-11, and 20-21 under 35 U.S.C. § 103 for obviousness based upon Tomkow in view of Tomkow 2 is not viable.

Conclusion

Based upon the foregoing, Appellants respectfully submit that the Examiner's rejections under 35 U.S.C. §§ 101-103 are not viable. Appellants, therefore, respectfully solicit the Honorable Board to reverse the Examiner's rejections under 35 U.S.C. §§ 101-103.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due under 37 C.F.R. §§ 1.17, 41.20, and in connection with the filing of this paper, including extension of time fees, to Deposit Account 09-0461, and please credit any excess fees to such deposit account.

Date: August 8, 2008

Respectfully submitted,

/Scott D. Paul/

Scott D. Paul

Registration No. 42,984

Steven M. Greenberg

Registration No. 44,725

Phone: (561) 922-3845

CUSTOMER NUMBER 46320

VIII. CLAIMS APPENDIX

1. An intelligent electronic mail (e-mail) gateway comprising:

a message store configured to store received messages forwarded by senders over a network to a mail server coupled to the e-mail gateway and associated with corresponding intended recipients; and,

a notification manager coupled both to the gateway and said message store, said manager having a configuration for notifying selected ones of said senders when delivery to said intended recipients has become impaired.

2. The gateway of claim 1, further comprising message generation logic programmed to format notifications for said senders which indicates at least one of

an estimated down time of said mail server;

an estimated time when said delivery will no longer be impaired; and

an alternate e-mail address with which said selected ones of said senders can retransmit said messages to corresponding intended recipients.

3. The gateway of claim 1, wherein said selected ones of said senders comprises at least one of senders who have been determined to be priority senders and senders who have labeled their respective messages urgent.

4. The gateway of claim 1, wherein said message store is a queue.

5. A method for intelligently handling an impairment to the delivery of e-mail messages to intended recipients in a mail delivery system, the method comprising the steps of:

storing received e-mail messages prior to forwarding said messages to inboxes of respective mail servers;

detecting an impairment to delivering said messages to said inboxes;

identifying senders for selected ones of said messages; and,

forwarding a notification of said impairment to said identified senders.

6. The method of claim 5, wherein said storing step comprises the step of queuing received e-mail messages prior to forwarding said messages to inboxes of respective mail servers.

7. The method of claim 5, wherein said detecting step comprises the step of consulting a data store of state information for selected ones of said respective mail servers to recall an already identified impairment.

8. The method of claim 5, wherein said detecting step comprises the step of probing selected ones of said respective mail servers to detect said impairment.

9. The method of claim 5, wherein said detecting step comprises the steps of:

attempting to transmit said messages; and,

concluding the existence of an impaired state when said attempt fails.

10. The method of claim 5, wherein said step of identifying comprises the step of identifying only priority senders.

11. The method of claim 5, wherein said step of identifying comprises the step of identifying only senders of urgent messages.

12. The method of claim 5, wherein said forwarding step comprises the steps of:
formatting a detailed notification describing a nature of said impairment; and,
forwarding said detailed notification to said identified senders.

13. The method of claim 5, wherein said forwarding step comprises the steps of:
formatting a notification comprising both a statement of said impairment and an estimate of when normal mail delivery service can resume; and,
forwarding said detailed notification to said identified senders.

14. The method of claim 5, wherein said forwarding step comprises the steps of:
for each of said identified senders, formatting a notification comprising both a statement of said impairment and an alternate e-mail address for use in retransmitting a corresponding one of said messages; and,
forwarding said detailed notification to said identified senders.

15. A machine readable storage having stored thereon a computer program for intelligently handling an impairment to the delivery of e-mail messages to intended recipients in a

mail delivery system, the computer program comprising a routine set of instructions for causing the machine to perform the steps of:

storing received e-mail messages prior to forwarding said messages to inboxes of respective mail servers;

detecting an impairment to delivering said messages to said inboxes;

identifying senders for selected ones of said messages; and,

forwarding a notification of said impairment to said identified senders.

16. The machine readable storage of claim 15, wherein said storing step comprises the step of queuing received e-mail messages prior to forwarding said messages to inboxes of respective mail servers.

17. The machine readable storage of claim 15, wherein said detecting step comprises the step of consulting a data store of state information for selected ones of said respective mail servers to recall an already identified impairment.

18. The machine readable storage of claim 15, wherein said detecting step comprises the step of probing selected ones of said respective mail servers to detect said impairment.

19. The machine readable storage of claim 15, wherein said detecting step comprises the steps of:

attempting to transmit said messages; and,

concluding the existence of an impaired state when said attempt fails.

20. The machine readable storage of claim 15, wherein said step of identifying comprises the step of identifying only priority senders.

21. The machine readable storage of claim 15, wherein said step of identifying comprises the step of identifying only senders of urgent messages.

22. The machine readable storage of claim 15, wherein said forwarding step comprises the steps of:

formatting a detailed notification describing a nature of said impairment; and,
forwarding said detailed notification to said identified senders.

23. The machine readable storage of claim 15, wherein said forwarding step comprises the steps of:

formatting a notification comprising both a statement of said impairment and an estimate of when normal mail delivery service can resume; and,
forwarding said detailed notification to said identified senders.

24. The machine readable storage of claim 15, wherein said forwarding step comprises the steps of:

for each of said identified senders, formatting a notification comprising both a statement of said impairment and an alternate e-mail address for use in retransmitting a corresponding one of said messages; and,

Application No.: 10/635,598

forwarding said detailed notification to said identified senders.

IX. EVIDENCE APPENDIX

No evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the Examiner has been relied upon by Appellants in this Appeal, and thus no evidence is attached hereto.

X. RELATED PROCEEDINGS APPENDIX

Since Appellants are unaware of any related appeals and interferences, no decision rendered by a court or the Board is attached hereto.